

Senate Bill 190

By: Senators Kennedy of the 18th, Ligon, Jr. of the 3rd, Cowsert of the 46th, Albers of the 56th, Stone of the 23rd and others

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Article 2 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated,  
2 relating to the Child Custody Intrastate Jurisdiction Act, so as to provide that a party may  
3 bring a counterclaim for contempt or enforcement of a child custody order or for  
4 modification of legal or physical custody in response to a complaint seeking a change of  
5 legal or physical custody; to revise definitions; to provide that a party may make a  
6 cross-motion or counterclaim for contempt or enforcement of a child custody order in  
7 response to a motion for contempt or enforcement of a custody order; to provide for related  
8 matters; to repeal conflicting laws; and for other purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 Article 2 of Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to the  
12 Child Custody Intrastate Jurisdiction Act, is amended by revising Code Section 19-9-22,  
13 relating to definitions, as follows:

14 "19-9-22.

15 As used in this article, the term:

16 (1) 'Custody' includes visitation rights. 'Legal custody' means the responsibilities for  
major decisions concerning the child, including, but not limited to, the child's education,  
health care, extracurricular activities, and religious training.

19 (2) 'Legal custodian' means a person, including, but not limited to, a parent, who has  
been awarded permanent custody of a child by a court order. A person who has not been  
awarded custody of a child by court order shall not be considered as the legal custodian  
while exercising visitation rights. Where custody of a child is shared by two or more  
persons or where the time of visitation exceeds the time of custody, that person who has  
the majority of time of custody or visitation shall be the legal custodian. 'Physical  
custody' means the custody schedule established for the child pursuant to Code Section  
26 19-9-1, including, but not limited to, parenting time and visitation.

27 (3) 'Physical custodian' means a person, including, but not limited to, a parent, who is not  
28 the 'legal custodian' of a child but who has physical custody of the child."

29 **SECTION 2.**

30 Said article is further amended by revising Code Section 19-9-23, relating to actions to obtain  
31 change of legal custody, how and where brought, and use of certain complaints prohibited,  
32 as follows:

33 "19-9-23.

34 (a) Except as otherwise provided in this Code section, after a court has determined who  
35 is to be the legal custodian of a child, any complaint seeking to obtain a change of legal  
36 custody of the child shall be brought as a separate action in the county of residence of the  
37 legal custodian of the child.

38 (b)(a) A complaint by the legal custodian seeking a change of legal custody or ~~visitation~~  
39 ~~rights parenting time~~ shall be brought as a ~~separate action~~ initiated in compliance with  
40 Article VI, Section II, Paragraph VI of the Constitution of this state.

41 (c)(b) No complaint specified in subsection (a) ~~or~~ (b) of this Code section shall be made  
42 in response to:

43 (1) ~~As a counterclaim or in any other manner in response to a~~ A petition for a writ of  
44 habeas corpus seeking to enforce a child custody order; or

45 (2) ~~In response to any~~ Any other action or motion seeking to enforce a child custody  
46 order, including, but not limited to, a motion for contempt.

47 (d)(c) The use of a complaint in the nature of habeas corpus seeking a change of child  
48 custody is prohibited.

49 (d) A party may make a cross-motion or counterclaim for contempt or enforcement of a  
50 custody order in response to a motion for contempt or enforcement of a custody order.

51 (e) A party may bring a counterclaim for contempt or enforcement of a custody order, or  
52 for modification of legal custody or physical custody in response to a complaint brought  
53 under subsection (a) of this Code section."

54 **SECTION 3.**

55 All laws and parts of laws in conflict with this Act are repealed.